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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID ARNOLD RODRIGUEZ, JR.,

Defendant and Appellant.

F061225

(Super. Ct. No. 1212348)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Hurl
William Johnson III, John G. Whiteside and John D. Freeland, Judges.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and
Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and
Respondent.

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*Before Dawson, Acting P.J., Poochigian, J. and Detjen, J.

David Arnold Rodriguez, Jr., appeals from the trial court's order finding that he had violated his probation in this case and sentencing him to prison. Appellate counsel found no appealable issues and requested this court conduct an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. After reviewing the record, we agree with appellate counsel that there are no appealable issues and affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

On July 27, 2006, a complaint was filed charging Rodriguez with making a criminal threat in violation of Penal Code section 422,¹ a felony, and violating a court order in violation of section 273.6. In addition, the complaint alleged that Rodriguez had suffered two prior convictions that constituted strikes within the meaning of section 667, subdivisions (b)-(i).

Rodriguez pled no contest to the lesser felony charge of threatening a witness, and the trial court struck the prior conviction allegations. The trial court suspended the sentence and placed Rodriguez on formal probation for a period of three years. One of the conditions of probation required Rodriguez to refrain from annoying, harassing, molesting, stalking, striking, assaulting, threatening, battering, or sexually assaulting the victim, C.

On April 13, 2007, Rodriguez was arrested and charged with numerous crimes, including the attempted murder of C. (§§ 187, 664), and spousal battery on C. (§ 273.5). (*People v. Rodriguez* (Super. Ct. Stanislaus County, No. 1226072.)) On April 18, 2007, a petition was filed alleging that Rodriguez violated the terms of his probation as a result of these allegations.

The record contains three motions made by Rodriguez pursuant to *People v. Marsden* (1970) 2 Cal.3d 118. The record suggests that Rodriguez made several other similar motions. In each motion contained in the record Rodriguez expressed his

¹All statutory references are to the Penal Code unless otherwise stated.

dissatisfaction with appointed counsel, first the public defender's office, and in the final motion conflict counsel, because the attorneys refused to conduct investigation that he deemed essential to his defense. The attorneys explained that the information on which Rodriguez was focused would not be admissible for various reasons, and they determined as a matter of trial tactics to not conduct the investigation Rodriguez sought. The trial court denied each motion, correctly noting that Rodriguez's complaints related to a choice of tactics, and the attorney, not the defendant, was charged with making tactical decisions. (See *People v. Williams* (1970) 2 Cal.3d 894, 905-906 [disagreement between defendant and attorney on tactical choices—such as whether to call witnesses—is within province of attorney and not a basis for substitution of counsel].) Rodriguez eventually made a motion to represent himself pursuant to *Faretta v. California* (1975) 422 U.S. 806. The trial court granted this motion.

After the jury in case No. 1226072 found Rodriguez guilty of the attempted murder of C., the trial court found that Rodriguez had violated the terms and conditions of probation and sentenced him to the midterm of three years in prison, to run concurrent to the sentence in the attempted murder case.

Rodriguez appealed from the judgments in both cases. We affirmed the judgment in the attempted murder case (*People v. Rodriguez* (F061269)), the companion to this case. Indeed, Rodriguez did not directly challenge the attempted murder conviction of C. in that appeal. He did make two arguments about evidentiary rulings. We concluded that neither argument had merit and, regardless of the issue of merit, Rodriguez could not demonstrate the rulings had resulted in a miscarriage of justice.

DISCUSSION

Rodriguez's counsel has filed a brief in this case pursuant to *People v. Wende*, *supra*, 25 Cal.3d 436 asserting that his review of the record did not reveal any appealable issue and requested this court independently examine the record. Rodriguez was advised of counsel's conclusions and informed of his right to submit supplemental briefing.

In his supplemental briefing, Rodriguez raises numerous arguments related to the judgment in the attempted murder conviction. These issues, regardless of merit, are irrelevant to the issue of whether he violated his probation and will not be addressed further.

We have independently reviewed the record and agree with trial counsel that there are no reasonably arguable legal or factual issues. Therefore, the judgment will be affirmed.